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No. 06-49

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IN THE

Supreme Court of the United States

JOHN HANCOCK LIFE INSURANCE COMPANY, ET AL.,

Petitioners,

v.

RALPH F. PATTEN, JR.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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INTRODUCTION

In this case, petitioners seek review of an issue they never contested below and on which the federal courts of appeals are in unanimous agreement: Whether a court may vacate an arbitration award for "manifest disregard of the law." Every court of appeals agrees that it may—and this Court has said so, too. Petitioners try to conjure up a conflict by identifying minor differences in the wording the courts use to define manifest disregard, but the differences are semantic. The consensus view of the courts of appeals is that an arbitrator manifestly disregards the law when he deliberately refuses to follow what he knows to be the law. The decision below is merely a fact-bound application of that consensus view.

Only in the Seventh Circuit is there uncertainty about the manifest disregard standard. Although petitioners suggest that the Seventh Circuit has rejected manifest disregard as a basis for overturning an arbitration award, all the decisions of that court acknowledge that manifest disregard for the law is a ground for vacating an arbitration award. There are, however, two lines of authority in the Seventh Circuit, one of which agrees with the consensus definition of manifest disregard, while another seems to define it more narrowly to include only the unusual circumstance where an arbitrator orders the parties to violate the law. The panel that devised the latter definition, however, limited it to cases where an arbitration agreement did not specify a rule of decision, and hence it would not apply to this case, where the parties' agreement states that it is governed by Massachusetts law.

In any event, the Seventh Circuit's apparent internal uncertainty about the manifest disregard standard, until definitively resolved by that court, does not establish a conflict among the circuits, and this Court does not sit to resolve intra-circuit disagreements that a court of appeals is fully capable of handling through the en banc rehearing process. If and when the Seventh Circuit conclusively adopts a manifest disregard standard that is out of step with the consensus of the

circuits—and applies it in a case where it makes a difference to the outcome—this Court can address the conflict that will then have arisen. Until then, there is no need for review.

Petitioners also seek resolution of a purported conflict over the Fourth Circuit's alternative rationale: that the arbitrator's decision did not draw its essence from the contract between the parties. Petitioners assert that this aspect of the Fourth Circuit's decision conflicts with Second Circuit decisions holding that the "essence of the agreement" doctrine is limited to labor arbitration and is inapplicable to commercial arbitration under the Federal Arbitration Act (FAA). Petitioners did not raise this issue in a timely manner below, and in any event, there is no conflict. The Second Circuit has made clear that a concept indistinguishable from the "essence of the agreement" standard applies under the FAA, where, as a corollary to the manifest disregard of law standard, an arbitrator's award may be vacated where it is in manifest disregard of the terms of the agreement. That standard is not meaningfully distinct from the "essence of the agreement" standard applied by the Fourth Circuit here, and thus there is no circuit conflict that requires review.

Finally, petitioners ask this Court to decide, contrary to the holdings of all the circuits, that neither manifest disregard of the law nor *any* ground of vacatur not explicitly set forth in the FAA may be used to challenge an arbitration award. Again, petitioners did not preserve this argument below, and it is therefore not properly presented by the petition for certiorari. In any event, petitioners' radical attempt to overturn long-settled law in every circuit does not merit plenary review by this Court. A well established consensus of the lower courts, supported by statements of this Court, should not be upset merely because a litigant is dissatisfied with the application of the law to the facts of its case, and there are no other reasons necessitating review of the issue by this Court.

STATEMENT OF THE CASE

1. Arbitration Agreements. Ralph Patten worked for petitioner John Hancock Life Insurance Company and its affiliates for nearly thirty years, until he was fired in 2001. Pet. App. 2a-3a. This case arises out of Patten's attempt to arbitrate his claim that he was wrongfully terminated and discriminated against based on age.

Patten and his employers had entered into two mandatory arbitration agreements. The 1992 "Mutual Agreement" provided that any claims not asserted within one year would be waived. Pet. App. 2a. In 1998, Patten entered into a new "Management Agreement" with petitioner Signator Investors, one of the John Hancock affiliates. Pet. App. 3a. Like the Mutual Agreement, the Management Agreement contained a mandatory arbitration clause. Unlike the Mutual Agreement, the Management Agreement did not limit the time for asserting claims. The Management Agreement expressly provided that it superseded all prior agreements and was governed by Massachusetts law.

2. District Court and Arbitration Proceedings. In August 2001, eight months after he was notified of his termination, Patten informed petitioners in writing that he was preparing to file suit alleging wrongful termination and age discrimination. Pet. App. 3a. In March 2002, after settlement attempts proved unsuccessful, Patten submitted a demand for arbitration asserting contract claims and state and federal employment discrimination claims. Pet. App. 4a. Petitioners refused to arbitrate because they maintained that the demand for arbitration was untimely under the superseded Mutual Agreement's one-year limitations period. Pet. App. 4a. Patten successfully filed suit in federal court to compel arbitration.

After extensive discovery, petitioners filed a summary judgment motion in the arbitration, arguing that Patten had failed to comply with the Mutual Agreement's one-year limitations period. Patten argued that he had complied with both agreements—that is, he had substantially complied with the

Mutual Agreement's one-year notice requirement, and the Management Agreement contained no such requirement.

The arbitrator ruled that the arbitration was governed by both agreements. He acknowledged that the Management Agreement contained no time limit, but nevertheless declared that it "necessarily contain[ed] an implied time limit." He adopted the superseded Mutual Agreement's one-year limit as the "implied" limit for the Management Agreement, and ruled that Patten's claims were time-barred. Pet. App. 5a-6a.

Patten moved in the district court to vacate the arbitration award on the grounds that it was in manifest disregard of the law and did not draw its essence from the parties' agreement. The district court denied the motion and Patten appealed.

3. Decision Below. On appeal, Patten sought only to vacate the arbitrator's dismissal of his claims under the Management Agreement against Signator Investors, arguing that the ruling that the Agreement contained a time limit—in the face of the arbitrator's acknowledgement that it did not and its express supersession of all prior agreements—constituted a manifest disregard of the law and failed to draw its essence from the agreement. The Fourth Circuit agreed.

The court explained that a party claiming manifest disregard of the law has the "heavy burden" of showing that the "arbitrator[] understand[s] and correctly state[s] the law, but proceed[s] to disregard the same." Pet. App. 9a (quoting *Remmey v. PaineWebber, Inc.*, 32 F.3d 143, 149 (4th Cir. 1994); *Upshur Coals Corp. v. United Mine Workers, Dist. 31*, 933 F.2d 225, 229 (4th Cir. 1991)). Applying that standard, the court concluded that the arbitrator had "revised the governing arbitration agreement on the basis of his own 'personal notions of right and wrong' and imposed a limitations period on the parties that they had specifically rejected." Pet. App. 12a-13a (citations omitted). The error went beyond a mere misapplication of contract law or an erroneous contract interpretation, which courts may not correct. Pet. App. 13a.

Instead, the arbitrator had effectively amended or altered the agreement and acted beyond the scope of his authority. *Id.*

Judge Luttig, in dissent, agreed with the majority that the arbitrator's decision was "clearly erroneous," and that the appropriate standard was supplied by *Remmey*, Pet App. 14a, but he would have applied the standard differently to the facts and, "with some reluctance," would have affirmed the district court's refusal to vacate the award. Pet. App. 16a.

Petitioners' request for en banc rehearing was denied because "no member of th[e] Court or the panel requested a poll on the petition." Pet. App. 44a. *See* 4th Cir. R. 35(b).

REASONS FOR DENYING THE WRIT

I. Petitioners Did Not Properly Raise Any of Their Questions Presented in the Fourth Circuit.

In this Court, petitioners assert that the Fourth Circuit's manifest disregard of law standard is legally erroneous and contrary to the law of other circuits; that the Fourth Circuit improperly applied the "essence of the agreement" doctrine to a non-labor arbitration and in a manner contrary to decisions of other circuits; and, finally, that *all* "non-statutory" grounds for vacatur of arbitration awards (including manifest disregard and the "essence of the agreement" doctrine) are contrary to the FAA. Petitioners did not properly raise any of these issues in the Fourth Circuit. Accordingly, they are not properly before this Court. "Ordinarily, this Court does not decide questions not raised or resolved in the lower court." *Youakim v. Miller*, 425 U.S. 231, 234 (1976).

In their brief below, petitioners expressly argued that the Fourth Circuit's definition of the manifest disregard standard in *Remmey*, 32 F.3d at 149—the very standard applied by the panel—correctly stated the law applicable to this case. *See* Br. for Appellees 4-6. Even in their petition for rehearing en banc, when they were no longer arguably constrained from arguing that Fourth Circuit law was incorrect and should be overruled, petitioners argued only that the panel had misap-

plied the *Remmey* standard to the facts, not that the standard itself was incorrect. *See* Pet. for Reh'g 13-15. The Fourth Circuit never had the opportunity to address the arguments petitioners now advance—namely, that its manifest disregard standard is legally erroneous and should be abandoned or replaced by what petitioners claim are the more stringent standards applied in other circuits.

Similarly, although respondent argued in his opening brief below that the arbitrator's award did not draw its essence from the parties' contract (*see* Br. for Appellant 10), petitioners' brief did not argue that the "essence of the agreement" standard is restricted to labor arbitration. *See* Br. for Appellees 3-7. Nor did petitioners argue, as they do now, that the circuits vary in how stringently they apply the "essence of the agreement" test, and petitioners nowhere urged the court to select some variant of the standard they deemed more favorable. *See id.* Rather, their brief ignored the "essence of the agreement" issue altogether. Only in their rehearing petition did they first argue that the standard is inapplicable to this case. There is no reason, however, that that argument could not have been pressed in their briefs before the panel.

Finally, petitioners' papers below never so much as hinted at the broadest argument they now advance—that the FAA completely forecloses all "non-statutory" grounds for vacatur, including manifest disregard. In both their brief and their petition for rehearing en banc, petitioners expressly urged the Fourth Circuit to apply its existing manifest disregard standard, a position flatly inconsistent with their current view that the standard violates the FAA. Petitioners might legitimately claim it would have been futile to advance this argument in their brief, since the panel could not have ignored the circuit's adoption of the manifest disregard standard in *Remmey* and other cases, but there is no excuse for not raising the claim in their petition for rehearing en banc. The very purpose of the en banc procedure is to allow the court to overrule prior opinions and address issues that have

divided the circuits (as petitioners claim, incorrectly, that this issue has done). By not raising the issue, petitioners denied the Fourth Circuit the opportunity to consider whether the manifest disregard standard should be discarded, and this Court should not consider that question in the first instance.

II. There Is No Conflict Among the Circuits Over Manifest Disregard.

A. The Manifest Disregard Doctrine Applied Below Has Been Settled Law for Decades.

For half a century, federal courts have reviewed arbitration awards for manifest disregard of law. The doctrine had its genesis in this Court's decision in *Wilko v. Swan*, 346 U.S. 427, 436-37 (1953), where the Court stated that "interpretations of the law by ... arbitrators *in contrast to manifest disregard* are not subject, in the federal courts, to judicial review for error in interpretation" (emphasis added). Although *Wilko*'s holding that federal securities claims are nonarbitrable was overruled in *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989), this Court has reiterated that arbitration awards are subject to review for manifest disregard of the law on a number of occasions. *See Shearson/Am. Exp., Inc. v. McMahon*, 482 U.S. 220, 259 (1987); *Thomas v. Union Carbide Agr. Prods. Co.*, 473 U.S. 568, 601 (1985). Most recently, in *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995), the Court cited *Wilko* for the proposition that manifest disregard of the law is among the "very unusual circumstances" in which the courts will set an arbitrator's decision aside. *Id.* at 942.

Soon after *Wilko*, lower federal courts began to review arbitration awards for manifest disregard of law. The first district courts to apply the doctrine were *Dulien Steel Products Inc. of Washington v. The Ogeka*, 147 F. Supp. 167 (W.D. Wash. 1956), and *Gramling v. Food Machinery & Chemical Corp.*, 151 F. Supp. 853 (W.D.S.C. 1957). The courts of appeals quickly followed suit, with the Second and

Ninth Circuits addressing the issue in *Amicizia Societa Navegazione v. Chilean Nitrate & Iodine Sales Corp.*, 274 F.2d 805 (2d Cir. 1960), and *San Martine Compania De Navegacion, S. A. v. Saguenay Terminals Ltd.*, 293 F.2d 796 (9th Cir. 1961). As the Second Circuit explained in *Amicizia*, the FAA provides that "an award may be vacated where the arbitrators have 'exceeded their powers,'" and "[a]pparently relying upon this phrase, the Supreme Court in *Wilko v. Swan*, ... suggested that an award may be vacated if in 'manifest disregard' of the law." 274 F.2d at 808. The Ninth Circuit similarly invoked *Wilko* and, cautioning that review for manifest disregard must be very limited, stated that "[w]e apprehend that a manifest disregard of the law ... might be present when arbitrators understand and correctly state the law, but proceed to disregard the same." 293 F.2d at 801.

In the 46 years since the Second Circuit's decision in *Amicizia*, the federal courts of appeals—the First through Eleventh, D.C. and Federal Circuits—have *unanimously* held that manifest disregard of the law is a basis for vacating arbitration awards subject to the FAA.[1] While the circuits' formulations of the manifest disregard standard vary slightly in wording, the overwhelming consensus is that the critical element of manifest disregard is an arbitrator's refusal to fol-

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[1] *See Cytyc Corp. v. DEKA Prods. Ltd. P'ship*, 439 F.3d 27, 35 (1st Cir. 2006); *Hoeft v. MVL Group*, 343 F.3d 57, 69 (2d Cir. 2003); *Dluhos v. Strasberg*, 321 F.3d 365, 370 (3d Cir. 2003); *Apex Plumbing Supply v. U.S. Supply Co.*, 142 F.3d 188, 193 (4th Cir. 1998); *Sarofim v. Trust Co. of the West*, 440 F.3d 213, 216-17 (5th Cir. 2006); *Solvay Pharms. v. Duramed Pharms.*, 442 F.3d 471, 475 n.3 (6th Cir. 2006); *Health Servs. Mgmt. Corp. v. Hughes*, 975 F.2d 1253 (7th Cir. 1992); *McGrann v. First Albany Corp.*, 424 F.3d 743, 749 (8th Cir. 2005); *Carter v. Health Net of Cal., Inc..*, 374 F.3d 830, 838 (9th Cir. 2004); *Dominion Video Satellite, Inc. v. Echostar Satellite L.L.C.*, 430 F.3d 1269, 1274 (10th Cir. 2005); *Peebles v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 431 F.3d 1320, 1326 (11th Cir. 2005); *Kurke v. Oscar Gruss & Son, Inc.*, 454 F.3d 350, 354 (D.C. Cir. 2006); *Flex-Foot, Inc. v. CRP, Inc.*, 238 F.3d 1362, 1365-66 (Fed. Cir. 2001).

low what he knows to be the law. *See Siegel v. Titan Indus. Corp.*, 779 F.2d 891, 893 (2d Cir. 1985).

In this case, the Fourth Circuit applied the well-settled principle that an arbitrator's knowing refusal to follow the law as he understood it is a ground for vacating an award. Although petitioners repeatedly say the Fourth Circuit adopted a "new" variant of the standard, the panel's opinion emphasized, consistent with precedents of the Fourth Circuit (and the other courts of appeals) that the manifest disregard standard places a "heavy burden" on a party seeking to vacate an award—a burden that can be satisfied "only where the 'arbitrator[] understand[s] and correctly state[s] the law, but proceed[s] to disregard the same.'" Pet. App. 9a (quoting *Remmey*, 32 F.3d at 149, and *Upshur Coals*, 933 F.2d at 229).[2] Judge Luttig's dissent acknowledged that the majority correctly stated the law, and reluctantly took issue only with the panel's *application* of the governing standard. *Id.* at 14a-16a (Luttig, J., dissenting). Petitioners echo Judge Luttig's criticisms of the way the panel applied the standard, but "misapplication of a properly stated rule of law" is generally not a ground for granting certiorari. S. Ct. R. 10.

B. The Fourth Circuit Did Not Adopt a "New Test" Permitting Vacatur of Merely "Unreasonable" Contract Interpretations.

Petitioners insist that the Fourth Circuit adopted a "new test" of manifest disregard that permits a court to set aside an arbitration award whenever it finds an arbitrator's contract interpretation unreasonable—a test petitioners say conflicts with the law in all other circuits. Pet. 12. Petitioners' argu-

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[2] The court did not require that the arbitrator expressly state the correct law before disregarding it, but courts agree that "[t]he manifest disregard doctrine is not confined to that rare case in which the arbitrator provides us with explicit acknowledgment of wrongful conduct...." *Westerbeke Corp. v. Daihatsu Motor Co.*, 304 F.3d 200, 218 (2d Cir. 2002).

ment rests on a distortion of the Fourth Circuit's ruling—a ruling that is fully consistent with the way other courts of appeals apply the manifest disregard standard to blatant deviations from unambiguous contracts.

The Fourth Circuit made clear that a court may not vacate an award "merely because [it] concludes that an arbitrator has 'misread the contract.'" Pet. App. 9a. Citing Fourth Circuit precedent, the court held that vacatur is appropriate "only when the result is not 'rationally inferable from the contract.'" *Id.* at 10a (quoting *Apex Plumbing Supply*, 142 F.3d at 193 n.5). The court also emphasized that the manifest disregard standard requires the court to find that the arbitrator correctly understood but ignored the law. *Id.* That standard was satisfied, the court held, when the arbitrator understood the unambiguous import of contractual language but instead "based his award on his own personal notions of right and wrong." *Id.* (quoting *Upshur Coals*, 933 F.2d at 229).

Contrary to petitioners' assertion, the Fourth Circuit's holding that an arbitrator's knowing refusal to give effect to unambiguous contractual language can evidence manifest disregard of law does not conflict with the law of other circuits. In fact, courts in circuits whose law petitioners claim conflicts with the Fourth Circuit's so-called "new rule" agree that manifest disregard of clear contractual terms is a basis for vacating an arbitration award.

Petitioners contend, for example, that the outcome below conflicts with Eighth Circuit case law. Pet. 12. But the Eighth Circuit, in a decision relied upon by the Fourth Circuit (but virtually ignored by petitioners), has held that an arbitrator may not "disregard or modify unambiguous contract provisions" and that an arbitrator "acts without authority" if he refuses to give effect to the "plain meaning" of "unambiguous language." *Missouri River Servs., Inc. v. Omaha Tribe of Neb.*, 267 F.3d 848, 855 (8th Cir. 2001). Unlike petitioners, but like the Fourth Circuit, the Eighth Circuit saw no inconsistency between these propositions and the principle that

"[a]n award 'manifests disregard for the law where the arbitrators clearly identify the applicable, governing law and then proceed to ignore it.'" *Id.* at 854 (citation omitted).

Similarly, although petitioners claim that the result below could not be sustained under the law of the First Circuit, that court has stated *repeatedly* that, under its manifest disregard standard, an award may be vacated if the arbitrator knew it was "contrary to the plain language of the contract." *Gupta v. Cisco Sys.*, 274 F.3d 1, 3 (1st Cir. 2001); *accord, Wonderland Greyhound Park v. Autotote Sys.*, 274 F.3d 34, 36 (1st Cir. 2001); *Bull HN Info. Sys. v. Hutson*, 229 F.3d 321, 330 (1st Cir. 2000). And petitioners' assertion that the result below conflicts with the law of the Sixth Circuit is contradicted by the very opinion they cite, *Jacada (Europe), Ltd. v. Int'l Mktg. Strategies*, 401 F.3d 701 (6th Cir. 2005), which says an award may be overturned if the arbitrator was not "even arguably construing or applying the contract." *Id.* at 712.

Indeed, even the Seventh Circuit precedents cited by petitioners, which petitioners contend reflect the narrowest view of manifest disregard taken by any federal appellate court, acknowledge that "in the typical arbitration," which like the one in this case "is concerned with interpreting a contract," an arbitration award may be overturned if the arbitrators "failed to interpret the contract at all" (as opposed to interpreting it in a way that is "incorrect or even wacky"), because in such a case the arbitrators "excee[d] the authority granted to them by the contract's arbitration clause." *Wise v. Wachovia Sec., LLC*, 450 F.3d 265, 269 (7th Cir. 2006). That view is fully consistent with the Fourth Circuit's ruling here, which permits vacatur only when the court finds that the arbitrator based an award not on the contract but on "his own personal notions of right and wrong" or some other basis not even "rationally inferable from the contract." Pet. App. 10a.

Petitioners cite *no* authority holding that disregard of unambiguous contract terms, no matter how blatant and obviously deliberate by the arbitrator, may *never* constitute mani-

fest disregard of law.[3] Absent such authority, their claim that the Fourth Circuit's extremely limited definition of the circumstances where disregard of contract terms may justify vacatur creates no conflict among the circuits.

C. Semantic Differences Among the Circuits in Describing the Manifest Disregard Standard Do Not Amount to a Conflict.

Beyond incorrectly claiming that the Fourth Circuit is alone in permitting the manifest disregard test to be satisfied by an arbitrator's deliberate disregard of unambiguous contractual language, petitioners assert that there is a four-way conflict among the circuits over the standard of manifest disregard. In fact, aside from minor semantic differences in the way the circuits describe the standard, there is a remarkable consensus among the circuits over the essential elements of a manifest disregard claim.

The fundamental requisite of a claim of manifest disregard is, as the majority and dissent acknowledged below and the overwhelming majority of the circuits agree, that "a manifest disregard of the law is established only where the 'arbitrator[] understand[s] and correctly state[s] the law, but proceed[s] to disregard the same.'" Pet. App. 9a (citation omitted); *accord id.* at 14a (Luttig, J., dissenting). The cases petitioners cite make clear that such knowing and deliberate disregard of the law is the key element of the manifest disregard standard in the First, Second, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits. *See* Pet. 12-13. Although petitioners contend that the Third Circuit has not explained what

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[3] Petitioners say the Fourth Circuit's decision conflicts with *B.L. Harbert Int'l, LLC v. Hercules Steel Co.*, 441 F.3d 905 (11th Cir. 2006). The Eleventh Circuit's holding there—that an error in contract construction does not justify vacatur unless the arbitrators recognized and deliberately disregarded an applicable rule of law, *id.* at 912—does not conflict with the Fourth Circuit's ruling here, which also permits vacatur only where an arbitrator both understands and disregards the law. Pet. App. 9a.

manifest disregard means (*see* Pet. 12 n.4), that court, too, has said a party seeking to vacate an award for manifest disregard "bears the burden of proving that the arbitrators were fully aware of the existence of a clearly defined governing legal principle, but refused to apply it, in effect, ignoring it." *Black Box Corp. v. Markham*, 127 F. Appx. 22, 25 (3d Cir. 2005) (quoting *Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 389 (2d Cir. 2003)).[4]

To be sure, courts do not always use exactly the same words to describe the manifest disregard standard, but as the First Circuit has observed (*Advest, Inc. v. McCarthy*, 914 F.2d 6, 9 (1st Cir. 1990) (citation omitted)):

> This standard of judicial review has taken on various hues and colorations in its formulations in this, and other, circuits. ... Although the differences in phraseology have caused a modicum of confusion, we deem them insignificant. We regard the standard of review undergirding these various formulations as identical, no matter how pleochroic their shadings and what "terms of art have been employed to ensure that the arbitrator's decision relies on his interpretation of the contract as contrasted with his own beliefs of fairness and justice." ... However nattily wrapped, the packages are fungible.

Despite the circuits' general agreement that manifest disregard involves an arbitrator's conscious refusal to follow the law, petitioners attempt to tease out a conflict among the circuits by arguing that the Second, Sixth, Ninth and D.C. Circuits have adopted a more stringent test than the First, Fourth, Eighth, Tenth, and Eleventh. Petitioners base this assertion on the fact that the former circuits often say that the

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[4] Petitioners do not mention the Federal Circuit, but while that court has had little occasion to apply the manifest disregard standard, there is no reason to think its standard differs from the consensus of the regional courts of appeals. *See Flex-Foot, Inc. v. CRP, Inc.*, 238 F.3d at 1365-66.

law disregarded by the arbitrators must be "well defined, explicit, and clearly applicable to the case." Pet. 13.[5]

There is no reason to think, however, that the use of this phrase reflects any real disagreement over the proper standard. In the 20 years since the Second Circuit first stated in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker*, 808 F.2d 930, 933 (2d Cir. 1986), that the law disregarded by the arbitrator must be "well defined, explicit, and clearly applicable to the case," no court of appeals has disagreed with that gloss on the basic standard. Indeed, the Eighth Circuit, which petitioners categorize as *not* requiring that the law be clearly applicable, has expressly *agreed* with *Bobker* that the law ignored by the arbitrator must be "clearly governing." *Marshall v. Green Giant Co.*, 942 F.2d 539, 550 (8th Cir. 1991). The First, Tenth, and Eleventh Circuits have cited *Bobker* with approval, without any suggestion that they disagreed with any aspect of the way *Bobker* described the standard. *See Advest*, 914 F.2d at 9; *ARW Exploration Corp. v. Aguirre*, 45 F.3d 1455, 1463 (10th Cir. 1995); *Raiford v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 903 F.2d 1410, 1412 (11th Cir. 1990). Similarly, the Fourth Circuit, in *Remmey*, 32 F.3d at 149-150, approvingly cited the Second Circuit's description of manifest disregard in *Folkways Music Publishers v. Weiss*, 989 F.2d 108, 111-12 (2d Cir. 1993). *Folkways*, in turn, used the "well defined, explicit, and clearly applicable" language from *Bobker*.

The principal reason some courts describing the manifest disregard standard have not quoted *Bobker*'s "well defined, explicit, and clearly applicable to the case" language appears to be that they thought it either went without saying or was not pertinent to the facts before them. For example, in the

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[5] Though petitioners do not mention it, the Fifth Circuit also sometimes states that the law disregarded must be "well defined, explicit, and clearly applicable to the case." *E.g., Brabham v. A.G. Edwards & Sons*, 376 F.3d 377, 382 (5th Cir. 2004).

one case in the Eleventh Circuit that vacated an arbitral award for manifest disregard, the prevailing party in the arbitration had conceded that the law was against it and urged the arbitrators to ignore the law. *Montes v. Shearson Lehman Bros.*, 128 F.3d 1456, 1459 (11th Cir. 1997). Because it was apparent that the legal principle the arbitrators disregarded was well-defined and clearly applicable, the Eleventh Circuit had no reason to focus on that aspect of the standard. Similarly, in this case, the legal principle the arbitrator disregarded—that wholly unambiguous contract language governs the obligations of the parties—is clear and well-defined, and the panel had no need to gild the lily by saying so.

Petitioners also contend that the Fifth Circuit's manifest disregard standard conflicts with that of the other courts of appeals because that court has stated that the manifest disregard inquiry is a two-step process, in which the court first determines whether the arbitrator knowingly disregarded a clearly applicable legal principle and then decides whether the resulting award works a "significant injustice." *Williams v. Cigna Fin. Advisors*, 197 F.3d 752, 762 (5th Cir. 1999). Although the Fifth Circuit is the only circuit that has spoken of the standard as a two-part one, its formulation does not reflect a conflict among the circuits.

To begin with, in articulating its two-part standard in *Williams*, the Fifth Circuit—the last regional circuit to accept the manifest disregard standard—did not say it was *disagreeing* with any of the previous circuits that had adopted the standard. The court said only that its formulation "should prove helpful as a basis for articulating and applying the manifest disregard doctrine." *Id.* at 762. Later decisions make clear that the court substantially agrees with decisions of other circuits defining manifest disregard. *See Sarofim v. Trust Co.*, 440 F.3d at 219 n.8 (stating that *Williams* did not reject the reasoning of the Second Circuit and that Second Circuit cases on manifest disregard are "persuasive authority" even though the Fifth Circuit takes *Williams* as its "starting point").

Moreover, the "significant injustice" inquiry does not make the Fifth Circuit's standard materially different from that applied by other circuits. In the rare circumstance where an arbitrator knowingly disregarded a clearly applicable legal standard, it is difficult to imagine courts finding that an injustice had not occurred. Certainly, the very few cases where federal appellate courts have found manifest disregard have involved circumstances that the courts clearly believed reflected injustice.[6] Moreover, the Fifth Circuit has had no occasion to say when it might find an arbitrator's disregard of law *not* to be unjust, because none of its decisions since *Williams* has found that an arbitrator knowingly disregarded the law, and thus none has reached the issue of "significant injustice."[7] The possibility that the Fifth Circuit might find some deliberate disregard of the law to be acceptable because it involved no "significant injustice" is, at this point, purely theoretical and creates no conflict among the circuits.

D. The Seventh Circuit's Decisions Do Not Create a Conflict Among the Circuits.

Petitioners' most significant claim of conflict involves recent decisions of the Seventh Circuit that state that "when the parties agree to arbitrate without specifying a rule of decision," an arbitration award may be overturned for manifest disregard of law only when it "require[s] the parties to violate the law." *George Watts & Son, Inc. v. Tiffany & Co.*, 248

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[6] Indeed, in this case, even Judge Luttig thought the arbitrator's "clearly erroneous" dismissal of a timely claim was unjust and voted to confirm the arbitrator's decision only "reluctan[tly]." Pet. App. 14a, 16a.

[7] *See, e.g., Williams*, 197 F.3d at 762; *Harris v. Parker Coll. of Chiropractic*, 286 F.3d 790, 795 (5th Cir. 2002); *Prestige Ford v. Ford Dealer Computer Servs.*, 324 F.3d 391, 396 (5th Cir. 2003); *Bridas S.A.P.I.C. v. Gov't of Turkmenistan*, 345 F.3d 347, 365 (5th Cir. 2003); *Brabham*, 376 F.3d at 382 n.5; *Kergosien v. Ocean Energy, Inc.*, 390 F.3d 346, 355 (5th Cir. 2004); *Am. Cent. E. Tex. Gas Co. v. Union Pac. Res. Group*, 93 F. Appx. 1, 6 (5th Cir. 2004); *Sarofim*, 440 F.3d at 213.

F.3d 577, 581 (7th Cir. 2001); *see also Wise*, 450 F.3d at 269.

The *Watts* concept that manifest disregard is limited to the exceedingly unusual circumstance where an arbitrator tells the parties to break the law, however, applies only when the parties have not agreed that the arbitrator is to apply particular legal principles. As Judge Easterbrook conceded in *Watts*, "[i]f the parties specify that their dispute is to be resolved under Wisconsin law, then an arbitrator's declaration that he prefers New York law, or no law at all, would violate the terms on which the dispute was given to him for resolution, and thus justify relief ...." 248 F.3d at 579. Thus, the *Watts* decision expressly acknowledges that "an arbitral order that does not adhere to the legal principles specified by contract [is] unenforceable." *Id.* at 581; *see also BEM I, L.L.C. v. Anthropologie, Inc.*, 301 F.3d 548, 555 (7th Cir. 2002).[8]

In this case, the parties' contract specified that it was to be governed by the law of Massachusetts. Pet. App. 3a. Given the parties' agreement on a rule of decision for disputes between them—Massachusetts law—*Watts* does not conflict with the Fourth Circuit's holding that the arbitration award must be vacated because the arbitrator manifestly disregarded that law. Indeed, *Watts* agrees that an arbitrator's refusal to adhere to "legal principles specified by contract," 248 F.3d at 581, requires that the award be vacated.

Similarly, the Seventh Circuit's recent *Wise* decision does not conflict with the result below, as it acknowledges that an arbitration award in a contract case may be overturned if it "failed to interpret the contract at all," because in such a case the arbitrators "exceed[ed] the authority granted to them by the contract's arbitration clause." 450 F.3d at 269.

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[8] *Watts* grounds this principle in Section 10(a)(4) of the FAA, 9 U.S.C. § 10(a)(4), which provides that an arbitration award must be vacated if it exceeds the arbitrator's powers.

Thus, even granting that *Watts* and *Wise* reflect that the Seventh Circuit panels that decided them feel some general discomfort with decisions of other circuits concerning manifest disregard, they do not conflict with the Fourth Circuit's decision *in this case*, because they expressly permit vacatur of an arbitral decision that manifestly disregards the rules of decision laid down in the parties' contract and fails to reflect a genuine interpretation of that contract.

In any event, it is unclear whether *Watts*'s purported limitation of manifest disregard (in cases where the contract specifies no rule of decision) to arbitration awards that order the parties to violate the law genuinely reflects the law of the Seventh Circuit. Before *Watts*, other Seventh Circuit decisions—in particular *Health Services Management Corp. v. Hughes*, 975 F.2d at 1267—followed the consensus view that an award could be vacated for manifest disregard where the arbitrators "deliberately disregarded what they knew to be the law in order to reach the result they did." *See also Nat'l Wrecking Co. v. Teamsters, Local 731*, 990 F.2d 957 (7th Cir. 1993); *Koveleskie v. SBC Capital Markets, Inc.*, 167 F.3d 361, 366 (7th Cir. 1999).

The Seventh Circuit has not yet resolved the internal disagreement among its opinions over the nature of the manifest disregard standard. The issue has never received en banc consideration. Seventh Circuit rules provide that a panel opinion may not overrule another panel opinion unless it is circulated to all judges of the circuit, and any panel opinion issued through this process must contain a footnote stating that "[t]his opinion has been circulated among all judges of this court in regular active service," and that a majority did not vote for en banc rehearing. 7th Cir. R. 40(e). The *Watts* opinion contains no such footnote, and as a result could not overrule *Hughes* or any other Seventh Circuit precedent.

The Seventh Circuit's failure to resolve the issue internally may reflect that it has not yet really been dispositive of any case. None of the Seventh Circuit decisions that accepted

the consensus standard of the other courts of appeals vacated an arbitration award for manifest disregard. Conversely, in *Watts*, the arbitration award would not have been vacated regardless of whether Judge Easterbrook's "illegality" standard or the consensus standard of *Hughes* had been applied. As Judge Williams, concurring in the judgment in *Watts*, noted: "The question of the continuing justification for and the proper interpretation of the manifest disregard of the law doctrine is not squarely before this court" because "with little effort we may dispose of Watts' claim under the manifest disregard doctrine as it presently exists." 248 F.3d at 581.[9]

Given the status of the manifest disregard standard in the Seventh Circuit, petitioners' claim of a circuit conflict is premature, at best. To the extent the Seventh Circuit's own precedents are in apparent conflict, an intra-circuit conflict that can be resolved by the court of appeals sitting en banc is generally not a ground for exercise of this Court's certiorari jurisdiction. *See* Robert L. Stern, *et al.*, *Supreme Court Practice* § 4.6, at 235 (8th ed. 2002). "It is primarily the task of a Court of Appeals to reconcile its internal difficulties." *Wisniewski v. United States*, 353 U.S. 901, 902 (1957).

Should the Seventh Circuit ultimately settle on a manifest disregard standard that dramatically departs from the consensus of the other circuits (not to mention the precedents of this Court that endorse manifest disregard as a ground for vacat-

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[9] Later Seventh Circuit cases citing *Watts*'s manifest disregard standard have rejected claims that an arbitrator "misunderstood" the law, *Butler Mfg. Co. v. United Steelworkers of Am.*, 336 F.3d 629, 636 (7th Cir. 2003), or made a "mistake" of law, *Baxter Int'l, Inc. v. Abbott Labs.*, 315 F.3d 829, 831 (7th Cir. 2003), which would not justify relief under the consensus standard of the other circuits. Other Seventh Circuit decisions that approvingly cite *Watts*'s illegality language are even more clearly dicta because, like *Wise*, they do not even involve claims of manifest disregard. *See, e.g., IDS Life Ins. Co. v. Royal Alliance Assocs.*, 266 F.3d 645, 650 (7th Cir. 2001) ("The plaintiffs wisely do not invoke ... 'manifest disregard of the law[.]'").

ing arbitration awards), and should it apply that standard in a case in which it determines the outcome, it might be appropriate for this Court to exercise its certiorari jurisdiction to bring the Seventh Circuit back in line with the law as it has prevailed for nearly 50 years. Until then, however, the Seventh Circuit's decisions do not indicate a need for this Court to review the consensus manifest disregard standard that prevails in the other circuits—especially not in a case that would come out the same way even under the more extreme of the two competing standards within the Seventh Circuit.

III. There Is No Genuine Conflict over the Application of the "Essence of the Agreement" Standard.

Petitioners assert that the Fourth Circuit's decision creates a conflict among the circuits by invoking the concept that an arbitration award in a case involving a contract issue must "draw its essence from the agreement" of the parties. Pet. App. 9a. According to petitioners, the "essence of the agreement" doctrine properly applies only to labor arbitration, and is not a ground for vacating awards in other arbitrations governed by the FAA. *See* Pet. 15-18.[10]

Petitioners admit that the First, Third, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Circuits agree with the Fourth Circuit that an arbitration award governed by the FAA may be vacated if it so plainly ignores the terms of an unambiguous contract that it does not draw its essence from the agreement. *See* Pet. 17. But petitioners assert that this consensus of the circuits conflicts with a Second Circuit decision stating that the "essence of the agreement" standard applies only to

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[10] Petitioners do not explain why they think review of arbitration awards under the FAA should be *more* deferential than review of labor arbitrations, given that the policies they cite (*see* Pet. 16, 18) suggest that labor arbitrators should be given *greater* leeway in interpreting collective bargaining agreements in order to maintain "industrial peace" by developing a "common law of the shop." *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 578, 581-82 (1960).

labor arbitration. *See Westerbeke Corp. v. Daihatsu Motor Co.*, 304 F.3d at 221-22.

Petitioners, however, fail to mention that Second Circuit precedents also establish that a standard functionally identical to the "essence of the agreement" doctrine (even if not so denominated) applies to arbitration awards under the FAA, which may be vacated if they manifestly disregard terms of an unambiguous contract. *See Yusuf Ahmed Alghanim & Sons v. Toys "R" Us, Inc.*, 126 F.3d 15 (2d Cir. 1997). The *Toys "R" Us* court, using reasoning strikingly similar to the Fourth Circuit's in this case, grounded this concept in the doctrine of manifest disregard of the law, *see id.* at 25, and stated, in language very close to that of the Fourth Circuit below, that "[w]e will overturn an award where the arbitrator merely makes the right noises—noises of contract interpretation—while ignoring the clear meaning of contract terms." *Id.* In *Westerbeke*, the Second Circuit expressly declined to hold that *Toys "R" Us* was not good law. *See* 304 F.3d at 222. Instead, *Westerbeke* decided the case before it "assuming the applicability of [the *Toys "R" Us*] doctrine," and held that "vacatur for manifest disregard of a commercial contract is appropriate only if the arbitral award contradicts an express and unambiguous term of the contract or if the award so far departs from the terms of the agreement that it is not even arguably derived from the contract." *Id.* That is precisely the standard applied by the Fourth Circuit below. *See* Pet. App. 9a-10a.

Petitioners also argue more generally that the Fourth Circuit's application of the "essence of the agreement" standard conflicts with decisions of other circuits that use the standard in cases governed by the FAA, and that the other circuits disagree with one another about the proper standard. *See* Pet. 19-22. Petitioners' claim of a conflict, however, rests on both a mischaracterization of the Fourth Circuit's decision and on a gross exaggeration of insubstantial differences in the ways the various circuits articulate the standard.

Petitioners' attempt to portray the circuits as broadly in conflict begins with a misstatement of the Fourth Circuit's holding: Petitioners insist that the Fourth Circuit adopted an "unreasonableness standard" for determining when an award fails to draw its essence from the parties' agreement. As we have explained, however, the Fourth Circuit expressly stated that an award may not be vacated merely because an arbitrator "misread" an agreement, but only when the arbitrator's decision is not "rationally inferable" from the agreement and reflects his "personal notions of right and wrong" rather than the unambiguous terms of the contract. Pet. App. 9a-10a.

The very cases petitioners cite show that this standard does not conflict with that of any of the other circuits, which similarly ask whether the arbitrator is "even arguably construing or applying the contract," Pet. 19 (citing First, Third, Ninth, Tenth, and D.C. Circuit authority); whether the award "in some logical way, [is] derived from the wording or purpose of the contract," Pet. 20 (citing 5th Circuit authority); and whether the award is "derived from the agreement, viewed in light of the agreement's language and context, as well as other indications of the parties' intention." Pet. 20 (citing Eighth Circuit authority).[11] Petitioners themselves admit that the Fourth Circuit's decision does not conflict with the Sixth Circuit's "essence" decisions. Pet. 20-21.

Petitioners' claims that the circuits are generally in disarray in their statement of the "essence" standard fares no better. As petitioners' own citations show, all the circuits, at bottom, inquire whether the arbitrator's award reflects an arguable effort to interpret the parties' contract.[12] Minor differ-

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[11] Petitioners' claim that the decision below conflicts with Eighth Circuit law is ironic in light of the Fourth Circuit's reliance on the Eighth Circuit's holding in *Missouri River Services*, 267 F.3d at 855, that an arbitrator may not "disregard or modify unambiguous contract provisions."

[12] Petitioners' assertion that one factor considered by the Sixth Circuit (whether the award imposes additional requirements not found in the

(*Footnote continued*)

ences in the way the courts articulate the standard from case to case do not amount to a conflict.

What petitioners really object to is not the legal standard applied by the Fourth Circuit, but the way the court applied the standard to the facts here. *See* Pet. 21 (defending "Arbitrator Truesdale's good-faith decision" and arguing that "at worst" he "merely 'fail[ed] to notice'" the contractual language that foreclosed his decision). Petitioners' quibble with the Fourth Circuit's application of a "correctly stated rule of law" is the archetype of a non-certworthy issue. S. Ct. R. 10.

IV. Petitioners' Request That the Court Reject All "Non-Statutory" Grounds for Vacatur, Including Manifest Disregard, Does Not Merit Review.

Petitioners' final and most sweeping argument asks this Court to overturn a half-century of settled law and decide that neither manifest disregard of the law, nor *any* other "non-statutory" ground for vacatur, may be used to challenge an arbitration award. Pet. 22-25. Petitioners never made this argument below, not even in their petition for rehearing en banc, and they should therefore be precluded from raising it in this Court. The argument, in any event, runs counter to this Court's repeated recognition of the manifest disregard doctrine, *see First Options*, 514 U.S. at 942, and the settled law in every federal circuit, *see* n.1, *supra*. If petitioners are correct, Congress has stood silently by for 50 years as the federal courts have radically misinterpreted the FAA. Such "prolonged congressional silence in response to a settled interpretation of a federal statute provides powerful support for

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contract) conflicts with the way the "essence" standard is applied by other circuits falters on petitioners' inability to cite even one case from another circuit rejecting this criterion. Given that the Sixth Circuit has articulated the standard the same way for over 20 years, *see Cement Divs., Nat'l Gypsum Co. v. United Steelworkers of Am.*, 793 F.2d 759, 766 (6th Cir. 1986), if there were in fact a conflict on that issue, one would think some opinion would have mentioned it by now.

maintaining the status quo." *Hibbs v. Winn*, 542 U.S. 88, 112 (2004) (Stevens, J. concurring); *see also Gen. Dynamics Land Sys. v. Cline*, 540 U.S. 581, 594 (2004). Congress's 50 years of silence "can be likened to the dog that did not bark." *Chisom v. Roemer*, 501 U.S. 380, 396 n.23 (1991).

In the absence of any conflict among the decisions of the courts of appeals or this Court, and in the face of longstanding Congressional silence, petitioners raise the abstract question whether manifest disregard should be characterized as a "statutory" or "non-statutory" basis for vacatur. That issue, too, is more semantic than real. The FAA provides that a federal court may vacate an arbitration award in any case "[w]here the arbitrators exceeded their powers ...." 9 U.S.C. § 10(a)(4). The manifest disregard doctrine has historically been viewed as an application of this language, *see Amicizia*, 274 F.2d at 808, because a manifest disregard of the law is, by definition, one way in which an arbitrator exceeds his or her powers. *See Kyocera Corp. v. Prudential-Bache Trade Servs.*, 341 F.3d 987, 1002-03 (9th Cir. 2003) ("[T]he 'exceeded their powers' clause of § 10(a)(4) ... provides for vacatur only when arbitrators purport to exercise powers that the parties did not intend them to possess or otherwise display a manifest disregard for the law.").

Although courts sometimes refer to manifest disregard as a "nonstatutory" or "common law" ground for vacatur, Pet. App. 7a, that is not the same thing as saying that it is contrary to, or even untethered to, the FAA. On the contrary, the manifest disregard doctrine may properly be regarded as part of the general or common federal law of arbitration that has developed to supplement the concise language of the FAA and effectuate the statute's broad policies. Indeed, even the Seventh Circuit's most restrictive decision concerning manifest disregard acknowledges that "manifest disregard of the law" is "often" covered by § 10(a)(4), and that where, as here, "the parties specify that their dispute is to be resolved under" a particular rule of decision and the arbitrator deliber-

ately departs from that rule of decision, the arbitrator's award "would violate the terms on which the dispute was given to him for resolution, and thus justify relief under § 10(a)(4)." *Watts*, 248 F.3d at 578-89.

Despite their protests about "the kind of merits-based review that has become endemic in the lower courts," Pet. 23, petitioners concede that federal-court vacatur of an arbitration award is a rarity. Under current law, review by courts "only occasionally alters the outcome of an award" and challenges to awards based on manifest disregard "are unsuccessful in the vast majority of cases." Pet. 26-27. Tellingly, petitioners report that—despite what they characterize as an overly generous manifest disregard standard throughout the circuits—their Westlaw search of all federal court of appeals cases revealed a universe of less than two hundred cases applying the doctrine, including *only six vacated awards*, one of which was reinstated upon remand to the arbitrator.

These small numbers reveal the unimportance of the questions presented and contradict the petition's picture of federal courts run amok. Attempting to explain this incongruity, petitioners argue that "the mere availability" of the manifest disregard doctrine "encourages losing parties to challenge arbitral awards," even where doing so is frivolous. Pet. 27. Petitioners' solution is to cut off this avenue of review altogether. The only authority petitioners cite for their argument that frivolous challenges are becoming a problem is *B.L. Harbert International v. Hercules Steel Co.*, 441 F.3d at 913. There, the court discussed what to do "[w]hen a party who loses an arbitration award assumes a never-say-die attitude and drags the dispute through the court system without an objectively reasonable belief that it prevail[.]" *Id.* But *Harbert* does not say such frivolous claims are any more common than other kinds of frivolous claims. And, more importantly, *Harbert* proposes a very different solution than do petitioners—namely, "insist[ing] that if a party on the short end of an arbitration award attacks that award in court with-

out any real legal basis for doing so, that party should pay sanctions." *Id.* The availability of such ordinary remedies for abusive litigation underscores the lack of any pressing need for this Court's review.

Moreover, while the Eleventh Circuit's threat of sanctions may be severe, it is far less extreme than the approach proposed by the petitioners. Petitioners' position, if accepted, would eliminate any safety valve for the rare case in which an arbitrator truly strays beyond the bounds of his or her authority. The presence of such a safety value bolsters the integrity of, and public confidence in, the alternative dispute resolution process as a whole.

Such a safety valve is particularly important in cases such as this one, in which there is a risk that, absent any possibility of review, federal statutory rights will devalued. In *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991)—a case that, like this one, included allegations of age discrimination in violation of federal law—this Court concluded that cases involving statutory rights are subject to arbitration, but it rested this conclusion on two fundamental assumptions about how arbitration operates. First, "by agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial forum." *Id.* at 26 (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985)). Second, "'although judicial scrutiny of arbitration awards necessarily is limited, *such review is sufficient to ensure that arbitrators comply with the requirements of the statute' at issue.*" *Id.* at 32 n.4 (quoting *Shearson/Am. Express v. McMahon*, 482 U.S. at 232) (emphasis added).

As the courts of appeals have recognized, "[t]hese twin assumptions regarding the arbitration of statutory claims are valid only if judicial review under the 'manifest disregard of the law' standard is sufficiently rigorous to ensure that arbitrators have properly interpreted and applied statutory law."

Cole v. Burns Int'l Sec. Servs., 105 F.3d 1465, 1487 (D.C. Cir. 1997); *see also Williams*, 197 F.3d at 761 ("The federal courts and courts of appeals are charged with the obligation to exercise sufficient judicial scrutiny to ensure that arbitrators comply with their duties and the requirements of the statutes."). By proposing to discard the manifest disregard doctrine, petitioners seek to eliminate a fundamental protection on which the arbitrability of statutory claims is premised.

Petitioners' sweeping attempt to discard the manifest disregard doctrine would not only overturn the law of every circuit, but would call into question the settled expectation that statutory discrimination claims such as respondent's are subject to mandatory arbitration. An established consensus in the lower courts, supported by statements of this Court, should not be overturned merely because a litigant is dissatisfied with the application of the law to the facts of its case.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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